103 STANDARD CONTRACT PROVISIONS

103.01 GENERAL PROVISIONS (CONSTRUCTION CONTRACT)

ARTICLE 1. DEFINITIONS

A. "District" as used herein means the District of Columbia, a municipal corporation.

B. "Mayor" as used herein means the elected head of the District as set forth in Public Law 93-198, dated December 24, 1973, Title 4, Part B, Section 422(1).

C. "Contracting Officer" as used herein means the head of the Department authorized to execute and administrate the Contract on behalf of the District and shall include his duly appointed successor and his authorized representative.

D. "Contract Documents" or "Contract" as used herein means Addenda, Contract Form, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

ARTICLE 2. ORDER OF PRECEDENCE

The Contractor shall keep on the work site a copy of Contract drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the contract drawings, or shown on the Contract drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.

All contract requirements are equally binding. Each Contract requirement, whether or not omitted elsewhere in the Contract, is binding as though occurring in any or all parts of the Contract. In case of discrepancy:

1. The Contracting Officer shall be promptly notified in writing of any error, discrepancy, or omission, apparent or otherwise.

2. Applicable Federal and D.C. Code requirements have priority over: the Contract form, General Provisions, Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

3. The Contract form, General Provisions and Labor Provisions have priority over: Change Orders, Addenda, Contract drawings, Special Provisions and Specifications.

4. Change Orders have priority over: Addenda, Contract drawings and Specifications.

5. Addenda have priority over: Contract drawings, Special Provisions and Specifications. A later dated Addendum has priority over earlier dated Addenda.

6. Special Provisions have priority over: Contract drawings and other specifications.

7. Shown and indicated dimensions have priority over scaled dimensions.

8. Original scale drawings and details have priority over any other different scale drawings and details.

9. Large scale drawings and details have priority over small scale drawings and details.

Any adjustment by the Contractor without a prior determination by the Contracting Officer shall be at his own risk and expense. The Contracting Officer will furnish from time to time

such detail drawings and other information as he may consider necessary, unless otherwise provided.

ARTICLE 3. CHANGES

A. DESIGNATED CHANGE ORDERS – The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

1. In the Contract drawings and specifications;

2. In the method or manner of performance of the work;

3. In the District furnished facilities, equipment, materials, or services; or;

4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Contractor from proceeding with the prosecution of the work so changed.

B. OTHER CHANGE ORDERS – Any other written order or an oral order (which term as used in this Section (B) shall include direction, instruction, interpretation, or determination) from the Contracting Officer, which causes any such change, shall be treated as a Change Order under this Article, provided that the Contractor gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Contractor regards the order as a Change Order.

C. GENERAL REQUIREMENTS – Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Contractor to an equitable adjustment hereunder.

If any change under this Article causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of this work under the Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly. Provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Contractor gives written notice as therein required unless this 20 days is extended by the Contracting Officer. And provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective drawings and specifications.

If the Contractor intends to assert a claim for an equitable adjustment under this Article, he must within 30 days after receipt of a written Change Order under (A) above or the furnishing of a written notice under (B) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (B) above.

No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

D. CHANGE ORDER BREAKDOWN – Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead, or profit will be allowed.

Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.

When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 4 and shall be based upon the breakdown shown in following subsections 1. through 7. The Contractor shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.

1. Labor – Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.

2. Bond – Payment for additional bond cost will be made per bond rate schedule submitted to the Department of Transportation with the executed Contract.

3. Materials – Payment for cost of required materials will be F.O.B. destination (job site) with an allowance up to 15% for overhead and profit.

4. Rented Equipment – Payment for required equipment rented from an outside company that is neither an affiliate of, nor a subsidiary of, the Contractor will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Contractor shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Contractor or an affiliate of or subsidiary of the Contractor.

5. Contractor's Equipment – Payment for required equipment owned by the Contractor or an affiliate of the Contractor will be based solely on an hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection.

6. Miscellaneous – No additional allowance will be made for general superintendence, use of small tools, and other costs for which no specific allowance is herein provided.

7. Subcontract Work – Payment for additional necessary subcontract work will be based on applicable procedures in 1. through 6., to which total additional subcontract work up to an additional 10 percent may be allowed for the Contractor's overhead and profit.

ARTICLE 4. EQUITABLE ADJUSTMENT OF CONTRACT TERMS

Pursuant to 23 CFR 635.109, the Contractor is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

Differing Site Conditions:

(1) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.

(2) Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Chief Engineer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

(4) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

Suspensions of Work Ordered by the Contracting Officer:

(1) If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Contracting Officer in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(2) Upon receipt, the Contracting Officer will evaluate the Contractor's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the contract is warranted.

(3) No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

(4) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

Significant Changes in the Character of Work

(1) The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Contractor agrees to perform the work as altered.

(2) If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Contracting Officer may determine to be fair and equitable.

(3) If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(4) The term "significant change" shall be construed to apply only to the following circumstances:

(a) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

(b) When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

ARTICLE 5. TERMINATION-DELAYS

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the District may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work involving the delay. In such event the District may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the District or may be on the site of the work and necessary thereof. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the District resulting from his refusal or failure to complete the work within the specified time.

If fixed and agreed liquidated damages are provided in the Contract and if the District does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

1. The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and

2. The Contractor, within ten (10) days from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgement, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.

If after notice of termination of the Contractor's right to proceed under the provisions of this article, it is determined for any reason that the Contractor was not in fault under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.

The rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.

The District may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

ARTICLE 6. TERMINATION FOR CONVENIENCE OF THE DISTRICT

A. The performance of work under the Contract may be terminated by the District in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.

4. Assign to the District, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the order and subcontracts so terminated, in which case the District shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.

6. Transfer title to the District and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:

a. The fabricated or unfabricated parts, work in progress, completed work, supplies, and other materials procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination; and

b. The completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the District.

7. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Contractor:

a. Shall not be required to extend credit to any purchase, and

b. May acquire any property under the conditions prescribed and at a price or prices approved by the Contracting Officer, and

c. Provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the District to the Contractor under the Contract or shall otherwise be credited to the price or cost of the work covered by the Contract or paid in such other manner as the Contracting Officer may direct.

8. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

9. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the District has or may acquire an interest.

10. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.

11. "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts, and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items at that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor. Final phase of plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

At any time after expiration of the plant clearance period, as defined above, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the District to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the District will accept title to such items, and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

C. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of termination and shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of C. above, the subject to any review required by the District's procedures in effect as of the date of execution of the Contract, the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Article, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall

not exceed that total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in E. below prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict, or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.

E. In the event of the failure of the Contractor and the Contracting Officer to agree as provided in D. above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with D. above:

1. With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

a. The cost of such work;

b. The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in B. 5. above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under the Contract, which amounts shall be included in the cost on account of which payment is made under E. 1. a. above; and

c. A sum, as profit on E. 1. a. above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparation made and work done by the Contractor for the terminated portion of the Contract but may not be allowed on the Contractor's settlement expenses. Anticipatory profits and consequential damages will not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole statement.

2. The reasonable cost of the preservation as protection of property incurred pursuant to B. 9; and any other reasonable cost incidental to the termination of work under the Contract including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under the Contract.

F. The total sum to be paid to the Contractor under E. 1. above shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under E. 1.

above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the District, or to a buyer pursuant to B.7. above.

G. The Contractor shall have the right of appeal under Article 7. herein, from any determination made by the Contracting Officer under C. or E. above, except that, if the Contractor has failed to submit his claim within the time provided in C. above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under C. and E above, the District shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or

2. If an appeal has been taken, the amount finally determined on such appeal.

H. In arriving at the amount due the Contractor under this Article, there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;

2. any claim which the District may have against the Contractor in connection with the Contract; and

3. the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the District.

I. If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made at such price or prices; however, nothing contained herein shall limit the right of the District and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

J. The District may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Contractor to the District upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Contractor to the date on which such excess is repaid to the District; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

K. Unless otherwise provided in the Contract or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor, but without direct charge to the District, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

ARTICLE 7. DISPUTES

All disputes arising under or relating to a contract shall be resolved as provided herein.

A. Claims by a Contractor against the District

Claim, as used in this clause, means a written assertion by the Contractor seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(a) All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision. The Contractor's claim shall include at least the following:

(1) A description of the claim and the amount in dispute.

(2) Any data or other information to support the claim.

(3) A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim, and

(4) The Contractor's request for relief or other action by the Contracting Officer.

(5) Certification that, to the best of the Contractor's knowledge, the cost and pricing data included with the claim is accurate, complete and current as of the date of claim submission. The Contractor shall agree that there is a continuing requirement to update cost and pricing data through the date of negotiations with the District are completed. The Contractor shall also agree that prices, including profit or fee, will be adjusted to exclude any significant price increases occurring as a result of cost or pricing data that was inaccurate, incomplete or not current.

(b) The Contracting Officer may meet with the Contractor in a further attempt to resolve the claim by agreement.

(c) For any claim of $50,000.00 or less, the Contracting Officer shall issue a decision within sixty (60) calendar days from receipt of a written request from a Contractor that a decision be rendered within that period.

(d) For any claim over $50,000.00, the Contracting Officer shall issue a decision within ninety (90) calendar days of receipt of the claim. Whenever possible, the Contracting Officer shall take into account such factors as the size and

complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(e) The Contracting Officer's written decision shall include the following:

(1) Provide a description of the claim or dispute.

(2) Refer to pertinent contract terms.

(3) State the factual areas of agreement and disagreement.

(4) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, shall not be binding in any subsequent proceeding.

(5) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted.

(6) Indicate that the written document is the Contracting Officer's final decision, and,

(7) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(f) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board, as authorized by D.C. Official Code§ 2-309.04.

(g) **(1)** If the Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim.

(2) Liability under paragraph g.1. shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(h) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Contractor as authorized by D.C. Official Code§ 2-309.04.

(i) Pending final decision of an appeal, action, or final settlement, a Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

Claims by the District against a Contractor

(a) Claim as used in this clause means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to a contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides relief sought by the claimant.

(b) **(1)** All claims by the District against a Contractor arising under or relating to a contract shall be decided by the Contracting Officer.

(2) The Contracting Officer shall send written notice of the claim to the Contractor. The Contracting Officer's written decision shall do the following:

(a) Provide a description of the claim or dispute;

(b) Refer to pertinent contract terms;

(c) State the factual areas of agreement and disagreement;

(d) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;

(e) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted.

(f) Indicate that the written document is the Contracting Officer's final decision, and

(g) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The decision shall be supported by reasons and shall inform the Contractor of his or her rights as provided herein.

(4) The authority contained in this clause shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle, or determine.

(5) This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action of judicial review is timely commenced by the District as authorized by D.C. Official Code§ 2-309.04.

(d) Pending final decision of an appeal, action or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

ARTICLE 8. PROTESTS

Any aggrieved person may protest this solicitation, award or proposed contract award. The protect shall be filed, in writing, with the Contract Appeals Board within ten (10) working days after the basis of the protest is known. The address of the Contract Appeals Board is 717 14th Street, N.W., Suite 430, Washington, D.C. 20005. The aggrieved person shall also mail a copy of the protest to the Contracting Officer.

ARTICLE 9. PAYMENTS TO CONTRACTOR

The District will pay the contract price or prices as hereinafter provided in accordance with District and Federal regulations.

The District will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. The Contractor shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration:

1. If such consideration is specifically authorized by the Contract;

2. If the Contractor furnishes satisfactory evidence that he has acquired title to such material, that it meets Contract requirements and that it will be utilized on the work covered by the Contract; and

3. If the Contractor furnishes to the Contracting Officer an itemized list.

The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the District of Columbia. The amount shall not exceed ten percent of the partial payment. However, if the Contracting Officer, at any time finds that satisfactory progress is being made, he/she may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. Also, whenever work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District, at his/her discretion, may release to the Contractor all or a portion of such excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made thereof without the retention of percentage, less authorized deductions.

All material and work covered by progress payments made shall thereupon become the sole property of the District, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the District to require the fulfillment of all of the terms of the Contract.

Upon completion and acceptance of all work, the amount due the Contractor under the Contract shall be paid upon presentation of a properly executed voucher and after a release, if required, of all claims against the District arising by virtue of the Contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

All payments by the District to the Contractor are subject to the provisions of D.C. Law 9-81 (District of Columbia Government Quick Payment Act of 1984 Amendment Act of 1992).

ARTICLE 10. TRANSFER OR ASSIGNMENT

Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor to any other party without the written consent of the Contracting Officer nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Contractor and the principal on such bond; and any attempted transfer as assignment not authorized by this Article shall constitute a breach of the Contract and the District may for such cause terminate the right of the Contractor to proceed in the same manner as provided in Article 5 herein, and the Contractor and his sureties shall be liable to the District for any excess cost occasioned the District thereby.

ARTICLE 11. MATERIAL AND WORKMANSHIP

A. GENERAL – Unless otherwise specifically provided in the Contract, all equipment, material, and articles incorporated in the work covered by the Contract shall be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in the Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may use any equipment, material, article, or process which, in the judgment of the Chief Engineer, is equivalent to that named unless otherwise specified. The Contractor shall furnish to the Chief Engineer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the mechanical and other equipment which the Contractor contemplates incorporating in the work. Machinery and equipment shall be in proper condition. When required by the Contract or when called for by the Chief Engineer, the Contractor shall furnish the Chief Engineer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection and subject to satisfactory replacement at Contractor's expense.

B. SURPLUS MATERIALS USE – Whenever specified in the Contract or authorized by the Chief Engineer that materials become the property of the Contractor, which by reference or otherwise shall include disposal of materials, it is understood that the Contractor accepts such materials "as is" with no further expense or liability to the District. If such material specified in the Contract will have a potential or real interest of value, the Contractor shall make allowance in the Contract to show such value.

C. DISTRICT MATERIAL – No materials furnished by the District shall be applied to any other use, public or private, than that for which they are issued to the Contractor. The full amount of the cost to the District of all materials furnished by the District to the Contractor and for which no charge is made, which are not accounted for by the Contractor to the satisfaction of the Chief Engineer, will be charged against the Contractor and his sureties and may be deducted from any monies due the Contractor, and this charge shall be in addition to and not in lieu of any other liabilities of the Contractor whether civil or criminal. Materials furnished by the District for which a charge is made at a rate mentioned in the specifications will be delivered to the Contractor upon proper requisitions thereof and will be charged to his account.

D. PLANT – The Contractor shall at all times employ sufficient tools and equipment for prosecuting the various classes of work to full completion in the manner and time required. The Contractor shall at all times perform work in sufficient light and shall provide proper illumination, including lighting required for night work as directed, as a Contract requirement.

All equipment, tools, formwork, and staging used on the project shall be of sufficient size and in proper mechanical and safe condition to meet work requirements, to produce satisfactory work quality and to prevent injury to persons, the project, or adjacent property.

When methods and equipment are not prescribed in the Contract, the Contractor is free to use tools, methods, and equipment that he satisfactorily demonstrates will accomplish the work in conformity with Contract requirements.

If the Contractor desires to use a method or type of tool or equipment other than specified in the Contract, he shall request approval to do so; the request shall be in writing and shall include a full description of proposed methods, tools, and equipment and reasons for the change or substitution. Approval of substitutions and changed methods will be on condition that the Contractor will be fully responsible for producing work meeting Contract requirements. If, after trial use of the substituted methods, tools, and equipment, the Chief Engineer determines that work produced does not meet Contract requirements, the Contractor shall complete remaining work with specified methods, tools, and equipment.

E. CAPABILITY OF WORKERS – All work under the Contract shall be performed in a skillful and workmanlike manner. The Chief Engineer may require the Contractor to remove from the work any such employees as the Chief Engineer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the Chief Engineer to be contrary to the public interest. Such request will be in writing.

F. CONFORMITY OF WORK AND MATERIALS – All work performed and materials and products furnished shall be in conformity, within indicated tolerances, with lines, grades, cross sections, details, dimensions, materials, and construction requirements shown or intended by the drawings and specifications.

When materials, products, or work cannot be corrected, written notice of rejection will be issued. Rejected materials, products, and work shall be eliminated from the project and acceptably replaced at Contractor's expense. The Chief Engineer's failure to reject any portion of the project shall not constitute implied acceptance nor in any way release the Contractor from Contract requirements.

G. UNAUTHORIZED WORK AND MATERIALS – Work performed or materials ordered or furnished for the project deviating from requirements without written authority will be considered unauthorized and at Contractor's expense. The District is not obligated to pay for unauthorized work. Unauthorized work and materials may be ordered removed and replaced at Contractor's expense.

ARTICLE 12. INSPECTION AND ACCEPTANCE

Except as otherwise provided in the Contract, inspection and test by the District of material and workmanship required by the District shall be made at reasonable times and at the site of the work, unless the Chief Engineer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Chief Engineer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to Contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the District after acceptance of the completed work under the terms of the last paragraph of this Article, except as herein above provided.

The Contractor shall, without charge, replace any material and correct any workmanship found by the District not to conform to the Contract requirements, unless in the public interest the District consents to accept such material or workmanship with an appropriate adjustment in the Contract price. The Contractor shall promptly segregate and remove rejected material from the premises at Contractor's expense.

If the Contractor does not promptly replace rejected material or correct rejected workmanship, the District:

1. May, by contract or otherwise, replace such material and correct such workmanship and charge the cost thereof to the Contractor, or
2. May terminate the Contractor's Right to Proceed in accordance with Article 5 herein.

The Contractor shall furnish promptly, without additional cost to the District, all facilities, labor and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Chief Engineer. All inspections and tests by the District shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in the Contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready for inspection at the time specified by the Contractor.

Should it be considered necessary or advisable by the Chief Engineer at any time before acceptance of the work, either in part or in its entirety, to make an examination of work completed, by removing or tearing out same, the Contractor shall, on request promptly furnish all necessary facilities, labor and material to do same. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, an equitable adjustment shall be made in the Contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted an equitable extension of time.

Unless otherwise provided in the Contract, acceptance by the District will be made as promptly as practicable after completion and inspection of all work required by the Contract. Acceptance shall be final and conclusive except as regards to latent defects, fraud, or such

gross mistakes as may amount to fraud, or as regards the District's rights under any warranty or guaranty.

ARTICLE 13. SUPERINTENDENCE BY CONTRACTOR

The Contractor shall give his personal superintendence to the performance of the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work site at all times during progress, with authority to act for him.

ARTICLE 14. PERMITS AND RESPONSIBILITIES

The Contractor shall, without expense to the District, be responsible for obtaining any necessary licenses, certificates, and permits, and for complying with any applicable Federal, State, and Municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety, health and environmental precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

ARTICLE 15. INDEMNIFICATION

The Contractor shall indemnify and save harmless the District and all of its officers, agents, and servants against any and all claims or liability arising from or based on, or as a consequence or result of, any act, omission or default of the Contractor, his employees, or his subcontractors, in the performance of, or in connection with, any work required, contemplated, or performed under the Contract.

ARTICLE 16. PROTECTION AGAINST TRESPASS

Except as otherwise expressly provided in the Contract, the Contractor is authorized to refuse admission either to the premises or to the working space covered by the Contract to any person whose admission is not specifically authorized in writing by the Contracting Officer.

ARTICLE 17. CONDITIONS AFFECTING THE WORK

A. GENERAL – The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work and the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work specified without additional expense to the District. The District assumes no responsibility for any understanding or representation concerning conditions made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the District is expressly stated in the Contract.

B. WORK AND STORAGE SPACE – Available work and storage space designated by the District shall be developed as required by the Contract or restored at completion of the project by the Contractor to a condition equivalent to that existing prior to construction. No payment will be made for furnishing or restoration of any work and storage space.

If no area is designated or the area designated is not sufficient for the Contractor's operations, he shall obtain necessary space elsewhere at no expense or liability to the District.

C. WORK ON WEEKENDS, LEGAL HOLIDAYS, AND AT NIGHT – No work shall be done at any time on Saturdays, Sundays or legal holidays, or on any other day before 7 a.m. or after 7 p.m., except with the written permission of the Contracting Officer or his designee, or as otherwise specified in the Contract, and pursuant to the requirements of the Police Regulations of the District.

D. EXISTING FEATURES – Subsurface and topographic information including borings data, utilities data, and other physical data contained in the Contract or otherwise available, are not intended as representations or warranties but are furnished as available information. The District assumes no expense or liability for the accuracy of, or interpretations made from, existing features. The Contractor shall be responsible for reasonable consideration of existing features above and below ground which may affect the project.

E. UTILITIES AND VAULTS – The Contractor shall take necessary measures to prevent interruption of service or damage to existing utilities within or adjacent to the project. It shall be the Contractor's responsibility to determine exact locations of all utilities in the field.

For any underground utility or vault encountered, the Contractor shall immediately notify the Chief Engineer and take necessary measures to protect the utility or vault and maintain its service until relocation by owner is accomplished. No additional payment will be made for the encountering of these obstructions.

In case of damage to utilities by the Contractor, either above or below ground, the Contractor shall restore such utilities to a condition equivalent to that which existed prior to the damage by repairing, rebuilding, or otherwise restoring as may be directed, at the Contractor's sole expense. Damaged utilities shall be repaired by the Contractor or, when directed by the Contracting Officer, the utility owner will make needed repairs at the Contractor's expense.

No compensation, other than authorized time extensions, will be allowed the Contractor for protective measures, work interruptions, changes in construction sequence, changes in methods of handling excavation and drainage, or changes in types of equipment used, made necessary by existing utilities, imprecise utility or vault information, or by others performing work within or adjacent to the project.

F. SITE MAINTENANCE – The Contractor shall maintain the project site in a neat and presentable manner throughout the course of all operations, and shall be responsible for such maintenance until final acceptance by the District. Trash containers shall be furnished, maintained, and emptied by the Contractor to the satisfaction of the Chief Engineer. Excavated earthwork, stripped forms, and all other materials and debris not scheduled for reuse on the project shall be promptly removed from the site.

The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense to the District. If the Contractor fails to comply with this order, the Contracting Officer may require the work to be done by others and the costs will be charged to the Contractor.

Upon completion of all work and prior to final inspection, the Contractor shall clean up and remove from the project area and adjacent areas all excess materials, equipment, temporary structures, and refuse, and restore said areas to an acceptable condition.

G. PRIVATE WORK – Except as specifically authorized by the Contracting Officer, the Contractor shall not perform any private work abutting District projects with any labor, materials, tools, equipment, supplies, or supervision scheduled for the Contract until all work under the Contract has been completed. Contract materials used for any unauthorized purpose shall be subtracted from Contract amount.

H. DISTRICT OF COLUMBIA NOISE CONTROL ACT OF 1977 – The Contractor shall be in strict compliance with D.C. Law 2-53, District of Columbia Noise Control Act of 1977 and all provisions thereof. Effective March 16, 1978. 24 D.C. Register 5293.

ARTICLE 18. OTHER CONTRACTS

The District may undertake or award other contracts for additional work and the Contractor shall fully cooperate with such other contractors and District employees and carefully coordinate his own work with such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by District employees. The District assumes no liability, other than authorized time extension, for Contract delays and damages resulting from delays and lack of progress by others.

ARTICLE 19. PATENT INDEMNITY

Except as otherwise provided, the Contractor agrees to indemnify the District and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Federal Government to be kept classified or otherwise withheld from issue) arising out of the performance of the Contract or out of the use or disposal by or for the account of the District, of supplies furnished or construction work performed hereunder.

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no persons or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the District shall have the right to terminate the Contract without liability or in its discretion to deduct from, the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 21. APPOINTMENT OF ATTORNEY

The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the District of Columbia and his successors in office as the true and lawful attorney of the Contractor for the purpose of receiving service of all notices and processes issued by any court in the District, as well as service of all pleadings and other papers, in relation to any

action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Contractor expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Contractor was personally within the District and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Contractor failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading, or other papers addressed to the Contractor at the address stated in the Contract.

ARTICLE 22. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Mayor or Member of the City Council or officer or employee of the District shall be admitted to any share or part of the Contract or to any benefit that may arise therefrom and any contract entered into by any Contracting Officer in which he or any officer or employee of the District shall be personally interested shall be void, and no payment shall be made thereon by the Director or any officer thereof; but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit.

ARTICLE 23. WAIVER

No waiver of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the Mayor be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the Mayor in writing.

ARTICLE 24. BUY AMERICAN

A. **AGREEMENT** – In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582, December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059-63 Comp., p 635), the Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, material men, and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.

B. **DOMESTIC CONSTRUCTION MATERIAL** – "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

C. DOMESTIC COMPONENT – A component shall be considered to have been "mined, produced, or manufactured in the United States" regardless of its source, in fact, if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the District to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

D. FOREIGN MATERIAL – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials can not exceed one-tenth of one percent of the total project cost, or $2,500.00, whichever is greater.

ARTICLE 25. TAXES

A. FEDERAL EXCISE – Materials, supplies, and equipment are not subject to the Federal Manufacturer's Excise Tax, if they are furnished or used in connection with the Contract provided that title to such materials, supplies, and equipment passes to the District under the Contract. The Contractor shall in such cases furnish his subcontractors and suppliers with a purchaser's certificate in the form prescribed by the U.S. Internal Revenue Service.

B. SALES AND USE TAXES – Materials which are physically incorporated as a permanent part of real property are not subject to District of Columbia Sales and Use Tax. The Contractor shall, when purchasing such materials, furnish his suppliers with a Contractor's Exempt Purchase Certificate in the form prescribed in the Sales and Use Tax Regulations of the District of Columbia. Where the Contractor, subcontractor, or material supplier has already paid the Sales and Use Tax on materials, as prescribed above, the Sales and Use Tax Regulations of the District of Columbia permit the Contractor, subcontractor, or material man to deduct the sales or use tax on the purchase price of the same on his next monthly return as an adjustment. However, the Contractor, subcontractor, or material supplier must satisfy the Finance Officer, D.C., that no sum in reimbursement of such tax was included in the Contract or else that the District has received a credit under the Contract in an amount equal to such tax.

District of Columbia Sales and Use Tax shall be paid on any material and supplies, including equipment rentals, which do not become a physical part of the finished project. (See District of Columbia Sales and Use Tax Administration Ruling No. 6).

The Contractor, subcontractor or material supplier shall provide proof of compliance with the provisions of D.C. Law 9-260, as amended, codified in D.C. Code Title 46-103-Employer Contributions, prior to contract Award.

The Contractor, subcontractor or material supplier shall provide proof of compliance with the applicable tax filing and licensing requirements set forth in D.C. Code, Title 47-Taxation and Fiscal Affairs, prior to contract award.

ARTICLE 26. SUSPENSION OF WORK

The Contracting Office may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the District.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Contracting Officer in the administration of

the Contract, or by his failure to act within the time specified in the Contract (or, if no time is specified, within a reasonable time), an adjustment will be made for an increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. However, no adjustment will be made under this Article for any suspension, delay or interruption to the extent:

1. That performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or

2. For which an equitable adjustment is provided or excluded under any other provision of the Contract.

No claim under this Article shall be allowed:

1. For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and

2. Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay or interruption, but not later than the date of final payment under the Contract.

ARTICLE 27. SAFETY PROGRAM

A. GENERAL – In order to provide safety controls for the protection of the life and health of District and Contract employees and the general public; prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of the Contract, the Contractor shall comply with all applicable Federal and local laws governing safety, health, and sanitation including the Safety Standards, Rules and Regulations issued by the American National Standards, U.S. Department of Labor, U.S. Department of Health and Human Services, D.C. Minimum Wage and Industrial Safety Board and the latest edition of "Manual of Uniform Traffic Control Devices" issued by the Federal Highway Administration.

The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may determine to be reasonably necessary.

The Contractor shall designate one person to be responsible for carrying out the Contractor's obligation under this Article.

The Contractor shall maintain an accurate record of all accidents resulting in death, injury, occupational disease and/or damage to property, materials, supplies and equipment incidental to work performed under the Contract. Copies of these reports shall be furnished to the Contracting Officer within two working days after occurrence.

The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken.

No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

This Article is applicable to all subcontractors used under the Contract and compliance with these provisions by the subcontractors will be responsibility of the Contractor.

(In Contracts involving work of short duration or of nonhazardous character, the following Section B. will be deleted by Special Provision.)

B. CONTRACTOR'S PROGRAM SUBMISSION – Prior to commencement of the work, the Contractor shall:

1. Submit in writing to the Contracting Officer for his approval his program for complying with this Article for accident prevention.

2. Meet with the Contracting Officer's Safety Representative after submission of the above program to develop a mutual understanding relative to the administration of the overall safety program.

ARTICLE 28. RETENTION OF RECORDS

Unless otherwise provided in the Contract, or by applicable statute, the Contractor, from the effective date of Contract and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Contractor but without direct charge to the District, all his books, records, documents and other evidence, bearing on the costs and expenses of the Contractor under the Contract.

103.02 CONTRACT LABOR PROVISIONS

The provisions of the Federal Labor Standards (construction contracts) of the Standard Contract Provisions, as amended or modified, that are applicable to the project are made a part of the construction contract. The Contractor shall keep fully informed of these articles which in any manner affect those engaged or employed on the work. He shall at all times observe and comply with these provisions. Penalty formulations of the Federal Labor Standards are prescribed in Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

103.02 A. STANDARD CONTRACT CLAUSES

Each contract and subcontract at any tier "in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decoration of a public building or public work, or building" shall be subject to these labor provisions.

1. MINIMUM WAGES

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor, United States Department of Labor, hereinafter referred to as the Secretary of Labor, under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less

than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under (1)(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, are considered wages paid to such laborers or mechanics subject to the provisions of 103.02A.1.(iv); also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 103.02A.(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 103.02A (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (A) The Contracting Officer of the District of Columbia, Department of Transportation, hereinafter referred to as the Contracting Officer, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination: and.

(4) With respect to helpers as defined in 29 CFR 5.2 (n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, agree with the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30 day period that additional time is necessary.

(C) In the event the Contractor, or the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to (B) and (C) above shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any cost reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. WITHHOLDING

The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the United States Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. PAYROLLS AND BASIC RECORDS

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly numbers of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approval programs shall maintain written evidence of the registration of apprenticeship programs, the certification of trainee programs, the registration of the apprenticeship programs, the certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the District of Columbia Government if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the District of Columbia Government. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 may be purchased for this purpose from the Superintendent of Documents (FSN 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by (B) immediately above.

(D) The Contractor shall notify the Contracting Officer in writing of all periods in which no work is performed. This notification applies to the prime Contractor and to all subcontractors.

(E) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under 103.02A.3.(i) available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the United States Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. APPRENTICES AND TRAINEES

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeypersons on the job site in any craft classification shall not be greater than

the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyperson hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyperson's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeypersons on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeypersons hourly rate specified in the applicable wage determination.

Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable

wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeypersons under this part shall be in conformity with the equal employment opportunity requirements and Executive Order 11246, as amended and 29 CFR Part 30.

5. COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. SUBCONTRACTS

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Contracting Officer may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5

7. CONTRACT TERMINATION: DEBARMENT

A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

8. COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REQUIREMENTS

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by reference in this Contract.

9. DISPUTES CONCERNING LABOR STANDARDS

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. CERTIFICATION OF ELIGIBILITY

a. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

103.02 B. CONTRACT WORK HOURS AND SAFETY STANDARDS

The Agency Head shall cause or require the Contracting Officer to insert the following clauses set forth in B.1., 2., 3. and 4. in full in any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 5.5(a) or 4.6 of Part 4 of 29 CFR. As used in this paragraph, the terms "laborers" and "mechanics" include watchpersons and guards.

1. OVERTIME REQUIREMENTS

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. VIOLATION; LIABILITY FOR UNPAID WAGES; LIQUIDATED DAMAGES

In the event of a violation of the clause set forth in 103.02B.1., the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in B.1. above, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clauses set forth in B.1. above.

3. WITHHOLDING FOR UNPAID WAGES AND LIQUIDATED DAMAGES

The Contracting Officer shall upon his own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in B.2 above.

4. SUBCONTRACTS

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in B.1 through B.4, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in B.1 through B.4.

103.02 C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

In addition to the clauses contained in 103.02B., in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 5.1, the Agency Head shall cause or require the Contracting Officer to insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watch men, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency head shall cause or require the Contracting Officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Con tractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

103.02 D. CONVICT LABOR (18 USC 436)

Convict labor shall not be used on contract work unless otherwise provided by law.

103.02 E. EQUAL OPPORTUNITY

On contracts exceeding $25,000.00, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, age, sex, religion or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, sex, religion or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Article. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, age, sex, religion or national origin.

The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or worker's representative of the Contractor's commitments under this Article, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor shall permit access to his books, records and accounts by the Contracting Officer and the Office of Local Business Development or their agents, for purposes of investigation to ascertain compliance with this Article.

In the event of the Contractor's non-compliance with this Article, the Contract may be canceled in whole or in part and the Contractor may be declared ineligible for further District contracts.

The Contractor shall include the provisions of this Article in every subcontract unless exempted by rules, regulations or orders of the District, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract as the Contracting Officer may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such directions by the Contracting Officer, the Contractor may request the District to enter into such litigation to protect the interest of the District.

103.02 F. NONSEGREGATED FACILITIES

The Contractor certifies that he does not and will not maintain or provide for his employment any segregated facility at any of his establishments; that he does not and will not permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain and retain identical certifications from proposed subcontractors prior to award of subcontracts.

"Segregated facilities" shall mean any waiting room, work area, wash and rest rooms, restaurant and other eating area, time clock, locker room and other storage or dressing area, parking lot, drinking fountain, recreation or entertainment area, transportation and housing facility provided for employees which is segregated by explicit directive or is segregated on the basis of race, color, age, sex, religion or national origin, because of habit, local custom, or otherwise.

Penalty for violation or making false statements is prescribed in 18 USC 1001.

103.02 H. BUSINESS EQUAL EMPLOYMENT OPPORTUNITY

A. GENERAL. An award cannot be made to any Bidder who has not satisfied the equal opportunity requirements as set forth by the Office of Local Business Development.

B. OPEN MARKET SOLICITATIONS

1. Preference for Local Businesses, Disadvantaged Businesses, Resident Business Ownerships or Business Operation in an Enterprise Zone.

a. General Preferences. Under the provisions of D.C. Law 13-169, "Equal Opportunity for Local, Small or Disadvantaged Business Enterprises Amendment Act of 2000", (the "Act"), the District shall apply preferences in evaluating offers from businesses that are local, disadvantaged, resident business ownership or located in an enterprise zone of the District of Columbia.

For evaluation purposes, the allowable preferences under the Act for open market procurements are as follows:

1. Four percent reduction in the bid price or the addition of four points on a 100-point scale for a local business enterprise (LBE) certified by the Local Business Opportunity Commission (LBOC);

2. Three percent reduction in the bid price or the addition of three points on a 100-point scale for a disadvantaged business enterprise (DBE) certified by the Local Business Opportunity Commission.

3. Three point reduction in the bid price or the addition of three points on a 100-point scale for a resident ownership (RBO), as defined in Section 2 (a) (8A) of the Act, and certified by the Local Business Opportunity Commission; and,

4. Two percent reduction in the bid price or the addition of two points on a 100-point scale for a business located in an enterprise zone, as defined in Section 2 (5) of D.C. Law 12-268 and in 27 DCMR 899, 39 DCR 9087-9088 (December 4, 1992).

Any Prime Contractor that is an LBE certified by the LBOC will receive a four percent (4%) reduction in bid price for a bid submitted by the LBE in response to an Invitation for Bides (IFB) or the addition of four points on a 100-point scale added to the overall score for bids submitted by the LBE in response to a Request for Proposal.

Any Prime Contractor that is a DBE certified by the LBOC will receive a three percent (3%) reduction in the bid price submitted by the DBE in response to an IFB or the addition of three points on a 100-point scale added to the overall score of proposals submitted by the DBE in response to a RFP.

Any Contractor that is a RBO certified by the LBOC will receive a three percent (3%) reduction in the bid price for a bid submitted by the RBO in response to an IFB or the addition of three points on a 100 point scale added to the overall score for proposals submitted by the RBO in response to a RFP.

Any Prime Contractor that is a business enterprise located in an enterprise zone will receive a two percent (2%) reduction in bid price for a bid submitted by such business enterprise in response to an IFB or the addition of two points on a 100 point scale added to the overall score for proposals submitted by such business in response to a RFP.

b. **Preferences for Subcontracting in Open Market solicitations with No LBE, DBE, or RBO Subcontracting Set Aside.** The preferences for subcontracting in open market solicitations where there is no LBE, DBE, or RBO subcontracting set aside are as follows:

1. If the Prime Contractor is not a certified LBE, certified DBE, certified RBO or a business enterprise in an enterprise zone, the District will award the above stated preferences by reducing the bid price or increasing the points proportionally based on the total dollar value of the bid or proposal that is designated by the Prime Contractor for subcontracting with a certified LBE, DBE, RBO or business located in an enterprise zone.

2. If the Prime Contractor is a joint venture that is not a certified LBE, certified DBE or certified RBO joint venture, or if the Prime Contractor is a joint venture that includes a business in an enterprise zone but such business located in an enterprise zone does not own and control at least fifty-one percent (51%) of the joint venture, the District will award the above-stated preferences by reducing the bid price or by increasing the points proportionally in the proposal based on the total dollar value of the bid or proposal that is designated by the Prime Contractor for a certified LBE, DBE, RBO or business located in an enterprise zone, for participation in the joint venture.

   EXAMPLE: If a non-certified Prime Contractor subcontracts with a certified local business enterprise for a percentage of the work to be performed on an

RFP, the calculation of the percentage points to be added during evaluation would be according to the following:

(Amount of Subcontract/ Amount of Contract) x 4 = Points Awarded for Evaluating LSDBE Subcontracting, where 4 is equivalent to four points on a 100 point scale.

The maximum total preference under the Act of this type of procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a 100 point scale for proposals submitted in response to an RFP. Any Prime Contractor receiving the full bid price reduction or point addition to its overall score for a particular preference will not receive any additional bid price reduction or points for further participation on a subcontracting level for that particular preference.

However, the Prime Contractor shall receive a further proportional bid price reduction or point addition on a different preference for participation on a subcontracting level for that different preference. For example, if an LBE Prime Contractor receives the four percent bid price reduction or the equivalent of four points on a 100 point scale, the LBE Prime Contractor does not receive a further price reduction or additional points if such contractor proposes subcontracting with an LBE. However, if this same LBE Prime Contractor proposes subcontracting with a DBE, the LBE Prime Contractor receives a further proportional bid price reduction or point addition for the DBE participation at the subcontracting level.

c. Preferences for Open Market Solicitations with LBE, DBE or RBO Subcontracting Set Aside. If the solicitation is an open market solicitation with LBE, DBE or RBO subcontracting set-aside, the Prime Contractor will receive the LBE, DBE or RBO preferences only if it is a certified LBE, DBE or RBO. There shall be no preference awarded for subcontracting by the Prime Contractor with a LBE, DBE or RBO, even if the Prime Contractor proposes LBE, DBE or RBO subcontracting above the subcontracting levels required by the solicitation. However, the Prime Contractor shall be entitled to the full preference for business located in an enterprise zone if it is a business located in an enterprise zone or a proportional preference if the Prime Contractor subcontracts with a business located in an enterprise zone.

The maximum total preference under the Act for this type of procurement is twelve percent (12%) for bids submitted in response to an IFB or the equivalent of twelve (12) points on a 100 point scale for proposals submitted in response to an RFP.

2. Preferences for Certified Joint Ventures Including Local or Disadvantaged Business or Resident Business Ownership.

When the LBOC-certified joint venture includes a local business enterprise (LBE), disadvantaged business (DBE) or a resident business ownership (RBO), and the LBE, DBE or RBO owns and controls at least fifty-one percent (51%) of the venture, the joint venture will receive the preferences as if it were a certified LBE, DBE or RBO.

3. Preference for Joint Ventures Including Businesses Located in an Enterprise Zone.

When a joint venture includes a business located in an enterprise zone, and such business located in an enterprise zone owns and controls at least fifty-one percent (51%) of the venture, the joint venture will receive the preferences as if it were a business located in an enterprise zone.

4. Penalties and Misrepresentations.

Any material misrepresentation on the sworn notarized self-certification form could result in termination of the contract, the contractor's liability for civil and criminal action in accordance with the Act, D.C. Law 12-268, and other District laws, including debarment.

5. Local, Small and Disadvantaged Business Enterprise Subcontracting.

a. When a Prime Contractor is certified by the Office of Local Business Development as a local, small or disadvantaged business or a resident business ownership, the Prime Contractor shall perform at least fifty percent (50%) of the contracting effort, excluding the cost of materials, goods, and supplies with its own organization resources, and if it subcontracts, fifty percent (50%) of the subcontracting effort, excluding the cost of materials, goods and supplies shall be with certified local, small or disadvantaged business enterprises and resident business ownerships, unless a waiver is granted by the Contracting Officer, with prior apprioval and consent of the Director of LBOC under the provisions of 27 DCMR 805, 39 DCR 5578-5580 (July 24, 1992).

b. By submitting a signed bid or proposal, the Prime Contractor certifies that it will comply with the requirements of this clause.

C. OPEN MARKET SOLICITATIONS WITH LBE, DBE OR RBO SUBCONTRACTING SET-ASIDE.

Under the provisions of 27DCMR 801.2(b), 39 DCR 5571 (July 24, 1992), a percentage, defined in the contract documents, of the total dollar value of a contract may be set aside for performance through subcontracting with local business enterprises, disadvantaged business enterprises, or resident business ownerships. Any Prime Contractor responding to a solicitation of this type shall submit with its bid or proposal a notarized statement detailing its subcontracting plans (see 103.02 H (B) (1) and 103.02 H (B) (2)). Once the plan is approved by the Contracting Officer, changes will occur only with the prior written approval of the Contracting Officer.

D. OPEN MARKET SOLICITATIONS WITH LBE, DBE OR RBO SUBCONTRACTING OR SUBCONTRACTING WITH BUSINESS LOCATED IN AN ENTERPRISE ZONE.

1. Subcontracting Plan

A notarized statement detailing a subcontracting plan shall be submitted, as part of the bid or proposal, by any Prime Contractor seeking a preference on the basis of proposed subcontracting with LBE, DBE, RBO or business located in an enterprise zone; and by any Prime Contractor responding to a solicitation in which there is a LBE, DBE, RBO subcontracting set aside. Each subcontracting plan shall include the following:

a. A description of the goods and services to be provided by the LBE, DBE, or RBo of business located in the enterprise zone;

b. If the Prime Contractor is seeking a preference on the basis of proposed subcontracting with a LBE, DEBE, RBO or a business located in an enterprise zone, a statement of the dollar amount, by type of business enterprise, of the bid or proposal that is designated by the Prime Contractor for a LBE, DEBE, RBO or business located in an enterprise zone;

c. If the solicitation contains a LBE, DBE, or RBO subcontracting set-aside, a statement of the dollar value, by type of business enterprise, of the bid or proposal that pertains to the subcontracts to be performed by the LBEs, DBEs, RBOs or businesses located in the enterprise zone;

d. The names and addresses of all proposed subcontractors who are LBEs, DBEs, RBOs or businesses located in an enterprise zone;

e. The name of theindividual employed by the Prime Contractor who will administer the subcontracting plan, and a description of the duties of the individual;

f. A description of the efforts the Prime Contractor shall make to ensure that LBEs, DBEs, RBOs and businesses located in an enterprise zone will have an equitable opportunity to compete for subcontracts;

g. In all subcontracts that offer further subcontracting opportunities, assurances that the Prime Contractor shall include a statement, approved by the Contracting Officer, that the subcontractor shall adopt a subcontracting plan similar to the subcontracting plan required by the contract;

h. Assurances that the Prime Contractor shall cooperate in any studies or surveys that may be required by the Contracting Officer, and submit periodic reports, as requested by the Contracting Officer, to allow the District to determine the extent of compliance by the Prime Contractor with the subcontracting plan;

i. List the type of records the Prime Contractor shall maintain to demonstrate procedures adopted to comply with the requirements set forth in the subcontracting plan, and include assurances that the Prime Contractor shall make such records available for review upon the District's request; and

j. A description of the Prime Contractor's recent effort to locate LBEs, DBEs, RBOs and businesses located in an enterprise zone and to award subcontracts to them.

2. Liquidated Damages

a. If during the period of performance on a contract, the Contractor fails to comply with the subcontracting plan submitted in accordance with the requirements of the contract and 27 DCMR 804.9, 39 DCR 5578 (July 24, 1992), and as approved by the Contracting Officer, the Contractor shall pay the District liquidated damages in the amount as defined in the contract documents for each day the Contractor fails to comply with the subcontracting plan, unless the Contracting Officer determines that the Contractor made a good faith effort to comply with the subcontracting plan in accordance with subparagraph (b) below.

b. Prior to assessing any liquidated damages under this provision, the Contracting Officer shall issue a written notice informing the Contractor that it is not in compliance with the subcontracting plan and set forth the areas of non-compliance. The written notice from the Contracting Officer shall provide the Contractor with ten (10) calendar days from receipt of the written notice to correct any areas of non-compliance or to demonstrate that the Contractor has used good faith efforts to comply with the subcontracting plan. If the Contractor fails to correct any areas of non-compliance or demonstrate good faith efforts within the ten day period, the Contracting Officer shall assess liquidated damages beginning on the first day after the end of the ten day period.

c. If failure to comply with the subcontracting plan is such that the Contracting Officer determines it to be a material breach of the contract and terminates the contract under the Default Clause of the Standard Contract Provisions, the Contractor shall be liable for aforementioned liquidated damages accruing until the time the District may reasonably obtain similar goods and services.

E. PROCUREMENTS RESTRICTED TO THE SMALL BUSINESS ENTERPRISE (SBE) SET-ASIDE MARKET

1. Designation of Solicitation for the Small Business Set Aside Market Only

Invitations for Bids or Requests for Proposals under this type of procurement are designated for certified small business enterprise (SBE) offerors only under the provisions of "The Equal Opportunity for Local, Small and Disadvantaged Business Enterprises of 1998, D.C. Law 12-268 (the "Act") and "The Equal Opportunity for Local, Small and Disadvantaged Business Opportunity Amendment Act of 2000" D.C. Law 13-169 (the "Amendment").

A SBE must be certified as small in the procurement category as defined in the advertisement for a given solicitation in order to be eligible to submit a bid or proposal in response to that solicitation.

2. Subcontracting by Certified Small Business Enterprise

a. When a Prime Contractor is certified by the Local Business Opportunity Commission (LBOC) as a small business, the Prime Contractor shall perform at least fifty percent (50%) of the contracting effort, excluding the cost of materials, goods and supplies, with its own organization and resources, and if it subcontracts, fifty percent (50%) of the subcontracting effort, excluding the cost of materials, goods and supplies shall be with certified local, small, and disadvantaged business enterprises and resident business ownerships unless a waiver is granted by the Contracting Officer, with the prior approval and consent of the Director of the LBOC, under the provisions of 27 DCMR 805, 39 DCR 9050-9060 (December 4, 1992).

b. By submitting a signed bid or proposal, the Prime Contractor certifies that it will comply with the requirements of paragraph (a) of this clause.

3. Vendor Submission of Certification

Any vendor seeking to submit a bid or proposal as a small business enterprise (SBE) in response to a solicitation must submit one of the following at the time of, and as part of its bid or proposal:

a. A copy of the SBE letter of certification from the Local Business Opportunity Commission;, or

b. A copy of a sworn notarized Self-Certification Form prescribed by the LBOC along with an acknowledgement letter issued by the Director of LBOC.

Bids or proposals from vendors that are not certified as small business enterprises through one of the means described in this section will not be considered. Bidders or offerors must submit the required evidence of certification or self-certification at the time of submission of bids or proposals.

The Self-Certification Package will be included as an attachment in procurement documents.

In order to be eligible to submit a bid or proposal, or to receive any preferences under this type of solicitation, any vendor seeking self-certification must complete and submit Self-Certification forms to:

Department of Human Rights and Local Business Development
ATTN: LSDBE Certification Program
441 Fourth Street, N.W. Suite 970 N
Washington, D.C. 20001

All vendors are encouraged to contact the Local, Small and Disadvantaged Business Enterprises Certification Program at (202) 727-3900 if additional information is required on certification procedures and requirements.

4. Penalties for Misrepresentation

Any material misrepresentation on the sworn notarized self-certification form could result in termination of the contract, the Contractor's liability for civil and criminal action in accordance with the Act and other District laws, including debarment.

5. Preferences in the SBE Set-Aside Market

Foe evaluation purposes, a certified small business enterprise (SBE) that is also certified by the LBOC as a local business enterprise (LBE) will receive a four percent (4%) reduction in the bid price for a bid submitted in response to an Invitation for Bids (IFB) or the addition of four points on a 100-point scale added to the overall score for proposals submitted in response to a Request for Proposals (RFP).

A certified small business that is also certified by the LBOC as a disadvantaged business enterprise (DBE) will receive a three percent (3%) reduction in the bid price submitted in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted in response to an RFP.

A certified small business that is also certified by the LBOC as a resident business ownership (RBO), as defined in Section 2(a)(8A) of the Amendment, will receive three percent (3%) reduction in the bid price for a bid submitted in response to an IFB or the addition of three points on a 100-point scale added to the overall score for proposals submitted in response to a RFP.

A certified small business that is also certified by the LBOC as a business in an enterprise zone, as defined in Section 2(5) of the Act and in 27DCMR 899, 39 DCR 9087-9088 (December 4, 1992), will receive two percent (2%) reduction in the bid price for a bid submitted in response to an IFB or the addition of two points on a 100-point scale added to the overall score for proposals submitted by such business enterprise in response to an RFP.

The maximum total preference under the SBE Set-Aside Program is twelve percent (12%) reduction in the bid price for bids submitted in response to an IFB or the addition of 12 points on a 100-point scale added to the overall score for proposals submitted in response to an RFP. The District shall award the preference points based only on whether the SBE Prime Contractor is also a LBE, DBE, RBO or business located in an enterprise

zone. There shall be no points awarded for subcontracting by the SBE Prime Contractor to a LBE, DBE, RBO or business located in an enterprise zone.

If the Prime Contractor is a certified SBE joint venture that is also certified as a LBE, DBE, or RBO joint venture, or if the Prime Contractor is a certified SBE joint venture that includes a business located in an enterprise zone and such business owns and controls at least fifty-one percent (51%) of the joint venture, the Prime Contractor will receive the preference as if it were a LBE, DBE, RBO or business located in an enterprise zone. There shall be no more points awarded for any other joint venture participation by LBEs, DBEs, RBOs or businesses located in an enterprise zone.

6. SBE Joint Ventures

A joint venture between a small business enterprise (as defined under Section 2(6) of the Act and implementing regulations) and another entity shall be eligible to submit a bid or proposal in response to a SBE set-aside solicitation if the joint venture is certified by LBOC under the provisions of 27 DCMR 817, 39 DCR 9072-9075 (December 4, 1992) or is self-certified under DCMR 818, 39 DCR 9075-9076 (December 4, 1992).

The LBOC shall certify a joint venture when the SBE affiliates itself with another entity to form a joint venture for a SBE set-aside solicitation if:

(a) The non-SBE partner demonstrates to the LBOC that its size does not exceed the size limitations set forth in the Act; or

(b) The LBOC determines that the certification of the joint venture with an entity exceeding the size limitation of the Act would not be detrimental to the SBE set-aside program.

103.02 I. WEEKLY COMPLIANCE STATEMENT

The Contractor and each subcontractor engaged in the construction, prosecution, completion or repair of any public building or public work shall furnish each week a statement with respect to the wages paid each of his employees engaged on work covered by these Labor Provisions during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor, or by an authorized officer or employee or the Contractor or subcontractor, who supervised the payment of wages, and shall be on the form entitled "Weekly Statement of Compliance" (Form No. DC 2640-11).

103.03 EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES

A. GENERAL. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract Provisions (Form FHWA -1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in the review of his/her activities under the contract.

The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of $10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of $10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

B. EQUAL EMPLOYMENT OPPORTUNITY POLICY. The Contractor will accept as his/her operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

C. EQUAL EMPLOYMENT OPPORTUNITY OFFICER. The Contractor will designate and make known to the Contracting Officer an equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

D. DISSEMINATION OF POLICY. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Contractor.

3. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.

In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools,

employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:

1. Notices and posters setting forth the Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

2. The Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, other appropriate means.

E. RECRUITMENT. When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

The Contractor shall, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.

In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractors to do the same, such implementation violates Executive Order 11246, as amended.)

The Contractor shall encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

F. PERSONNEL ACTIONS. Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

1. The Contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

2. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his avenues of appeal.

G. TRAINING AND PROMOTION.

1. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

2. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2 of the Special Provisions.

3. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

4. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

H. UNIONS. If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

1. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

2. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

3. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive

possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the State highway agency.

I. SUBCONTRACTING.

1. The Contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

2. The Contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

J. RECORDS AND RECEIPTS.

1. The Contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

a. The number of minority and non-minority group members and women employed in each work classification on the project.

b. The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).

c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

d. The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

2. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

3. The Contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

103.04 EMPLOYEE TRAINING REQUIREMENTS

When referenced in the Contract Special Provisions, this article shall be utilized in the implementation of 23 U.S.C. Pt. 230, Subpt. A, App. B.

The Contractor shall provide on-the-job training aimed at developing full journeyworkers in the type of trade or job classification involved.

In the event that a Contractor subcontracts a portion of the contract work, he/she shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also ensure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeyworkers in the various classifications with a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to the Department for approval the names, addresses and social security numbers of the trainees to be trained in each selected classification. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed by him/her on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journey worker status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he/she has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he/she has successfully completed a training course leading to journeyworker status or in which he/she has been employed as a journeyworker. The Contractors should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractors records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program approved by the District of Columbia, Department of Transportation and the Federal Highway Administration. The Department and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyworker status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau and Training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

The Contractor will be reimbursed in the amount indicated in the unit price column of the Pay Item Schedule in the Bid Form and Proposals for each hour of training. As verified by the Chief Engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training indicated above may only be made to the Contractor where he/she does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainees wages during the off-site training period.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyworker, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of Training Provision. It is normally expected that a trainee will begin his/her training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his/her work classification or until he/she has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A Contractor will have fulfilled his/her responsibilities under the Training Provision if he/she has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyworkers rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project.

In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by the Training Provision.

The Contractor shall furnish the trainee a copy of the program he/she will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor will provide for the maintenance of records and furnish periodic reports documenting his/her performance under this article.